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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GAIL GALLOWAY, : CIVIL ACTION 1:00-CV-00649
Plaintiff :
vs. :
Judge Sylvia H. Rambo ✓
PENNSYLVANIA BOARD OF :
PROBATION AND PAROLE, :
Defendants :
:

FILED
HARRISBURG, PA

AUG 30 2002

MOTION TO DISMISS

MARY E. D'ANDREA, CLERK
Per GR
Deputy Clerk

NOW comes the Defendant, Robert B. Stewart, by and through counsel, and files
the within Motion to Dismissing as follows:

FACTUAL BACKGROUND:

The Plaintiff, Gail Galloway, filed this civil action alleging violations of his son David's civil rights and his own civil rights on or about April 14, 2000. In his own behalf, Galloway alleged that Defendant Stewart had conspired with Defendant Judge William Caldwell to deprive Galloway of his civil rights.

All of the Defendant's responded to Plaintiff's Complaint by filing Motions to Dismiss. Defendant Stewart also filed a Motion to Dismiss.

By Order dated January 2, 2001 the Court dismissed any claims raised by Plaintiff Gail Galloway on behalf of his son David. All other claims (i.e., the conspiracy claims) raised against Stewart remained.

On or about April 16, 2001, Defendant Stewart filed a Motion for Summary Judgment seeking discharge of all remaining claims against him. Defendant Stewart filed a Statement of Undisputed Facts along with the Summary Judgment Motion and Brief in Support of the Motion. Defendant Galloway did not respond to the Statement of Undisputed Facts. By Order dated July 15, 2002, the Court granted Defendant Stewart's Motion for Summary Judgment and dismissed Plaintiff's remaining claims against Defendant Stewart.

The Plaintiff has now filed an Amended Complaint in which he alleges Defendant Stewart did not properly serve him with court filing or adhere to filing time requirements in an habeas corpus/civil rights claim filed by Galloway on or about 1994.

The Plaintiff's claims against Stewart should be dismissed for all of the following reasons:

1. The claims raised by Galloway are barred by the statute of limitations.
2. Plaintiff's claims against Defendant Stewart in this proceeding have been effectively dismissed by the Court's Order of July 16, 2001 and July 16, 2002. Plaintiff has no right to file an amended complaint against Defendant Stewart.

3. Defendant Stewart's alleged actions or inactions as a defendant in a previous civil rights action do not give rise to "state action". No averments in the complaint support the conclusion or inference that Defendant Stewart was an individual acting under color of state law.

CONCLUSION:

For all of the above reasons, Plaintiff's Amended Complaint against Defendant Stewart should be dismissed with prejudice.

Respectfully submitted,

HENRY CORCELIUS



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814/643-2460
Attorney for Defendant Robert B. Stewart

CERTIFICATE OF SERVICE

Certified, true and correct copies of the foregoing Motion to Dismiss were served on all interested parties listed below by sending same first class mail, postage prepaid on August 29, 2002 to the following addresses:

Gail Galloway
RD #1, Box 30
Petersburg, PA 16669



Peter M. McManamon